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IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

HARRY J. WILFORD, EVERETT G. DAGUE,
HERMAN J. CASTEN and HERMAN B. BOEDING,
Petitioners

v.

UNITED STATES OF AMERICA,
Respondent

On Appeal from the United States Court
of Appeals for the Eighth Circuit

**BRIEF OF THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA AS AMICUS CURIAE**

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INTEREST OF THE AMICUS CURIAE

This brief amicus, in support of the position of Petitioners Harry J. Wilford, Everett G. Dague, Herman J. Casten and Herman B. Boeding, is filed with the consent of the parties, as provided for in Rule 36 of the Rules of this Court, by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization with approximately seven hundred fifteen (715) affiliated local unions having a mem-

bership of approximately 1.8 million working men and women. It is the largest and most diverse labor organization in the United States. Its affiliated local unions represent American workers in every phase of the economy for purposes of collective bargaining with their employers. Accordingly, the International Union has a vital interest in the laws delineating the framework of the labor relations system and those which impact upon the rights of unions and their members within that system.

The decision of the United States Court of Appeals for the Eighth Circuit in *United States v. Wilford*, 710 F.2d 439 (8th Cir.), *petition for cert. filed*, 52 U.S.L.W. 3268 (U.S. Sept. 23, 1983) (No. 83-496), concludes that certain acts intended to further the legitimate goals of a union involved in a labor dispute violate the Hobbs Act, 18 U.S.C. § 1951. Previously, this Court narrowly limited the application of the Hobbs Act based upon the expressed Congressional intent that it be utilized to control pursuit of illegal goals. The Eighth Circuit's imposition of the Hobbs Act upon concerted activities in labor-management relations, in conjunction with the severe penalties which are designed without regard to the effect they have on the exercise of other legitimate rights, is inconsistent with the carefully constructed federal labor system and is well beyond the intended purpose of the Act.

The International Union and its affiliated local unions and members, active participants in the existing system of labor-management relations, have an interest in preserving that process which merits the consideration of its views by this Court. In supporting the petition for certiorari, the amicus does not assert that illegal conduct committed during a labor dispute be immune from criminal prosecution merely because it is intended to achieve a legitimate objective, but contends that random acts of misconduct should continue to be the responsibility of state law enforcement authorities, the National Labor

Relations Board and the federal government pursuant to federal laws other than the Hobbs Act.

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the Eighth Circuit is in direct conflict with this Court's decision in *United States v. Enmons*, 410 U.S. 396 (1973). In *Enmons*, this Court held that the Hobbs Act prohibition of the "wrongful" use of force or violence to obtain property limited the statute's coverage to instances where the defendant had no lawful claim to property. In applying this holding to labor-management relations, this Court established that the Hobbs Act does not reach the "use of violence to achieve legitimate union objectives." 410 U.S. at 400.

The decision is inconsistent with those of other Circuit Courts of Appeals which have properly limited application of the Hobbs Act to situations where the defendants did not have a legitimate claim to the property and, therefore their activities were in pursuit of illegitimate labor objectives. In *Wilford*, the Eighth Circuit's failure to engage in the essential analysis of the Hobbs Act, as established by *Enmons*, subjects union officials to federal extortion prosecution for pursuing goals legitimized by the federal labor laws.

The Sixth Circuit has also recently issued an opinion which, like the *Wilford* decision, improperly relies upon an evaluation of the "means" used to achieve "legitimate labor objectives" in finding a violation of the Hobbs Act. *United States v. Russo*, 708 F.2d 209 (6th Cir. 1983), *petition for cert. filed*, 52 U.S.L.W. 3190 (U.S. Sept. 3, 1983) (No. 83-368). Together, both *Wilford* and *Russo* represent a substantial departure from the decision of this Court in *Enmons* in an area that is likely to be the subject of recurring prosecutions.

ARGUMENT

L. A Court Cannot Find Labor Union Officials Guilty Of Violating The Hobbs Act, 18 U.S.C. § 1951, Without First Determining Whether The Goals Sought Were "Legitimate Labor Objectives"

In *Wilford*, the Eighth Circuit did not determine whether the Petitioners had a lawful claim to the property obtained. This issue was not decided because the Court specifically refused to determine if the union was pursuing legitimate labor objectives. Yet that determination must be made in a labor case in order to establish whether the Hobbs Act is applicable.

In *Enmons*, this Court construed the scope of the Hobbs Acts' coverage in the context of a labor dispute. The Defendants in *Enmons* were indicted for using violence, damaging company transformers and blowing up an electrical substation, to force the company to accede to collective bargaining demands for higher wages. 410 U.S. at 397-98. In that context this Court held that the word "wrongful" in the statutory definition of extortion "has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property." *Id.* at 400. Specifically, with regard to labor relations, the Court concluded that "the Hobbs Act did not sweep within its reach violence during a strike to achieve legitimate collective-bargaining objectives." *Id.* at 404. This result attached even though the means used, damaging transformers and blowing up a substation, were clearly illegal.

The decision of the Eighth Circuit clearly exemplifies why this Court must intervene. The Court of Appeals specifically refused to determine "whether the defendants' asserted objectives [were] 'legitimate labor objectives.'" 710 F.2d at 444. Instead, the Court engaged in a review of the means used, the union's carding of drivers, to pur-

sue its legitimate labor objective. The union sought to pursue the legitimate and long-recognized objective of preserving the union wage scale from being undercut by the lower wages paid to non-union drivers. This legitimate union goal was attacked by the non-union drivers who attempted to perform work covered by the union collective bargaining agreement. The union's response was to organize and bring into the union these non-union drivers.

The Court failed to perform the crucial and fundamental task of determining if the Petitioners had a lawful claim to the property in issue. Thus, under the Eighth Circuit's view of *Enmons*, a fear of economic loss, occurring during the course of an organizing drive, can be the basis of a federal extortion prosecution despite the fact that organizing employees is a legitimate labor objective and unions have a lawful claim to the monies requested as dues.

In contrast, other Circuit Courts faced with Hobbs Act allegations in a labor relations setting have first isolated the objectives the parties were pursuing.¹ These Courts of Appeals have limited application of the Act to situations where the union agents were extracting property to which they had no lawful claim, such as obtaining personal payoffs or attempting to obtain financial payments, disguised as wages, for unwanted, imposed, or fictitious services. *United States v. Quinn*, 514 F.2d 1250, 1257 (5th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976).

It should be noted, however, that the Sixth Circuit has recently joined the Eighth Circuit in holding that pursuit

¹ The following cases applied the *Enmons* analysis regarding application of the Hobbs Act to illegitimate labor objectives. *United States v. Clemente*, 640 F.2d 1069 (2d Cir. 1981); *United States v. Arambasich*, 597 F.2d 609 (7th Cir. 1979); *United States v. Nell*, 570 F.2d 1251 (5th Cir. 1978); *United States v. Daley*, 564 F.2d 645 (2d Cir. 1977); *United States v. Jacobs*, 543 F.2d 18 (7th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

of legitimate objectives by union and employer agents may be the subject of Hobbs Act prosecution. *United States v. Russo*, 708 F.2d 209 (6th Cir. 1983), *petition for cert. filed*, 52 U.S.L.W. 3190 (U.S. Sept. 3, 1983) (No. 83-368). The dissenting opinion in that case supports the instant Petitioners' suggestion that certiorari should be granted to properly limit the application of the Hobbs Act consistent with this Court's opinion in *Enmons*. *Id.* at 219-20.

II. Imposition Of Federal Criminal Penalties Under The Hobbs Act Will Inhibit Legitimate Union Activity

The decision of the Eighth Circuit [and Sixth Circuit in *U.S. v. Russo*] will have a chilling effect upon the right of union members to engage in activities to achieve legitimate labor goals. As has been previously recognized, utilization of the Hobbs Act to punish illegal acts intended to achieve legitimate union objectives would subject union members to penalties which are so severe as to significantly deter their willingness to exercise rights protected by the National Labor Relations Act. *United States v. Caldes*, 457 F.2d 74, 78 (9th Cir. 1972). It is inconceivable that Congress intended to create a labor relations system which protects an individual's right to engage in collective activity while subjecting the individual who exercises that right to criminal prosecution.²

² The contention that the Congress did not intend the Hobbs Act to extend to misconduct committed in furtherance of a legitimate union objective is buttressed by recent bills seeking to legislate in this area. No fewer than four bills have been proposed which would have extended the federal criminal system by either revoking the Hobbs Act's exemption for activity which seeks a legitimate goal (S. 462, 98th Cong., 1st Sess. (1983)); (H.R. 450 and S. 613, 97th Cong., 1st Sess. (1981)) or by criminalizing "any act of violence or threat of violence in a labor dispute . . ." (H.R. 115, 97th Cong., 1st Sess. (1981)). Two additional bills sought to broaden the concept of "extortion" beyond its present Hobbs Act definition. (H.R. 1647 and S. 1630, 97th Cong., 1st Sess. (1981)).

In recognition of the special attention paid by Congress to the labor-management system, this Court has established that the federal government cannot extend its criminal jurisdiction to assume responsibility for policing the conduct of labor disputes absent a clear statement of Congressional intent. *United States v. Enmons*, *supra*, 410 U.S. at 411. See *United States v. DeLaurentis*, 491 F.2d 208 (2d Cir. 1974). Even in the application of criminal statutes, the unique status of labor matters has been acknowledged. *United States v. Cerilli*, 603 F.2d 415, 419 (3d Cir. 1979), *cert. denied*, 444 U.S. 1043 (1980). That sensitivity merits application here since the adverse consequences on the labor relations system of utilizing the Hobbs Act to reach acts intended to achieve legitimate objectives are similar to those considered by the Court in *Enmons*.³

Specifically, the severe penalties imposed for violating the Hobbs Act (twenty years in prison or a \$10,000 fine or both) would diminish the exercise of an individual's federally protected rights. Congress has specifically legislated criminal penalties for union misconduct. See, e.g., 29 U.S.C. § 530. The traditional method of dealing with industrial misconduct has been to permit the National Labor Relations Board to fashion remedies which are appropriate for the particular circumstances. *United States v. DeLaurentis*, *supra*, 491 F.2d at 213 and n. 15. In fashioning those remedies, the National Labor Relations Board has consistently recognized the adverse impact on the exercise of protected concerted activities of awards of monetary damages against unions. *Union de Tronquistas*,

³ This court recently reemphasized the fact that "[t]he National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, addresses in great detail the relationship between employer, employee and union in a great variety of situations" concluding that "it would be an unsettling event [to scrutinize] strike and picket-line, violence . . . in the light of the strictures of § 1985(3)". *United Bhd. of Carpenters, Local 610 v. Scott*, — U.S. —, 51 U.S.L.W. 5173, 5177 (U.S. July 5, 1983) (No. 82-486).

Local 901, 202 N.L.R.B. 399, 400 (1973). Similar considerations have led this Court to preclude imposition of punitive damages upon unions for errors committed in exercising their statutory obligation to represent their members, *Electrical Workers v. Foust*, 442 U.S. 42 (1979), as well as a wide variety of other circumstances. *Id.* at 52.

Clearly, the threat of the imposition of the severe criminal sanctions provided by the Act in this case would interfere with the policies and activities protected by the National Labor Relations Act to a far greater extent than the monetary penalties eschewed by the Board and this Court. Moreover, these criminal sanctions would clearly chill the exercise of rights guaranteed by Sections 7 and 13⁴ of the Act.

CONCLUSION

For the reasons stated herein, as well as those previously given by Petitioners, it is urged that the petition for certiorari be granted and the decision of the United States Court of Appeals for the Eighth Circuit be reversed.

Respectfully submitted,

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⁴ 29 U.S.C. §§ 157, 163.